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wrongfully retook it. His possession at the time of sale had not been entrusted so that he could not pass title to the defendant. Clearly, however, this fiction in no way renders the plaintiff more deserving, and it should not alter the actual fact that the brokers never lost possession. By the plaintiff's delivery the brokers were given that real possession which ultimately enabled them to make the sale. Under these circumstances, this fiction of the criminal law established for a wholly different purpose, should not be invoked to the prejudice of a *bona fide* purchaser.

The court rests its decision, however, upon another theory of the doctrine of breaking bulk. One judge alone in the case in which that doctrine originated, and a Massachusetts judge by way of *dictum*, explain the rule on the ground that the bailee never is given possession of the contents of the package. *Carrier's Case*, Y. B. 13 Edw. IV. 9, *pl.* 5, per Choke, J., *Belknap v. National Bank of N. A.*, 100 Mass. 376, *per* Chapman, C. J. As has been indicated, this view is opposed to the great weight of authority. It does not accord with the actual facts, and is at most a fiction, like the other view of the doctrine. Consequently as a basis for a decision it is unsatisfactory.

THE LIABILITY OF BUCKET SHOPS AS CONSTRUCTIVE TRUSTEES.—The rule is well recognized that where a defendant aids in a breach of trust while acting in good faith and with the trustee's authority, his liability to the *cestui* is limited to making restitution for the benefit actually received. *Florence, etc., Co. v. Zeigler*, 58 Ala. 221; *Bonesteel v. Bonesteel*, 30 Wis. 516. A recent Court of Appeals decision involves the application of this doctrine to a novel set of facts. *Bendinger v. Central, etc., Exchange*, 109 Fed. Rep. 926. Without notice of the trust a bucket shop received misappropriated trust funds as margins. After the payment of profits to the trustee, the whole was finally "wiped out" when the market fell. In a suit against the bucket shop the *cestui* was allowed to recover the total amount advanced without deducting the profits returned to the trustee. The *ratio decidendi* is that as the transactions were outlawed by a statute, which also allowed the recovery of money lost in gambling, the defendant became a trustee *de son tort* from the moment of receiving the original funds. Had the transactions been legitimate, that is, had the margins been lost through a depreciation in investments actually purchased, the defendant would have been protected, as he would have retained no part of the trust *res*. *Dunlap v. Limes*, 49 Ia. 177. On this reasoning it might seem that the defendant in the principal case ought not to be responsible for the money returned to the trustee. But the defendant, while purporting to pay profits, was as an actual fact merely paying a lost bet. On somewhat similar facts an English case holds that when the defendant makes fictitious entries he cannot later plead that they are untrue. *Rapp v. Latham*, 2 B. & Ald. 795. It might seem therefore that the defendant here cannot maintain that the repayment to the trustee "as profits" is a part of the principal. This reasoning is not adopted in the principal case, however, the language of which denotes an intention to punish the defendant merely as a law breaker. The result of the position taken by the court makes a party with no knowledge of the trust absolutely liable to the beneficiary from the moment

he receives the funds ; and to be consistent the court would have to go so far as to hold that even if the defendant had actually and in good faith repaid the principal to the trustee he would still be liable to the *cestui*. This is introducing a new element into the law of constructive trusts, which has heretofore limited the liability of a constructive trustee acting in good faith to the amount of benefits actually received. *Florence, etc., Co. v. Zeigler, supra*. Furthermore the contention is unsound that "an act that is criminal and void cannot be said to be founded upon good faith." The term good faith as used in this class of cases means ignorance of the beneficiary's equity, and no amount of criminality on the defendant's part can transform this ignorance into fraudulent knowledge. Although the reasoning of the court is careless, the result may well be beneficial in discouraging bucket shops. The actual decision however may be supported either on the doctrine of *Rapp v. Latham, supra*, or possibly by construing each repayment of so-called "profits" as a closing of one transaction, and a reinvestment of the original sum advanced, and the latter would therefore represent the actual benefit to the defendant. The court appealed from gave judgment in favor of the plaintiff for the amount of the margins less the amount returned to the trustee. On the whole, this decision seems more equitable than that of the upper court, and more in accord with the general rule in regard to constructive trustees.

COMPULSORY PILOTAGE. — It is by no means settled what effect statutes requiring the employment of licensed pilots have upon the liability of the owner for the negligence of such pilots. In a recent case where the defendant's vessel, while under the command of a New York licensed pilot and wholly through his fault collided with a pier owned by the plaintiff, the court held that the defendant was not liable in an action at common law, upon the ground that he was not personally at fault and that, as the employment of the pilot was compelled by the New York statute, the defendant could not be made responsible as principal. *Homer Ramsdell Co. v. La Compagnie Générale Transatlantique*, 182 U. S. 406. This result in an action at law seems obviously correct. Yet the injured party may also have alternative remedies in admiralty, and since his rights are then governed by the principles of maritime law, it is by no means necessary that the same result should be reached. A libel *in rem* is based upon the distinct conception that the right to redress is against the ship itself ; in other words that the ship is the offending person regardless of the fact under whose control it was at the time of the collision. As culpability may thus be fixed upon the ship it has consequently been held in the United States that a libel *in rem* will be sustained under such circumstances. *The China*, 7 Wall. 53. In England, after many conflicting decisions the opposite conclusion has been reached. *The Halley*, L. R. 2 P. C. 193. Although perhaps a trifle harsh the American rule is a logical outcome of the principles of maritime law ; it is furthermore supported by the law of continental Europe. 5 LYON-CAEN ET RENAULT, DROIT COMMERCIAL, §§ 190, 190 bis. In the remaining alternative open to one injured under such circumstances — a libel *in personam* against the owner — the peculiar doctrine which allows recovery where the ship is libelled *in rem* can have no application, and the same result should be reached as in an action at law. See CURTIS, MERCHANT SEAMEN, 196.